

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY MARCH 29, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2302

**Introduced by Committee on Judiciary (Jones (Chair), Evans,
Laird, Levine, Lieber, and Montanez)**

**(Principal coauthors: Assembly Members Arambula, Baca, Bass,
Berg, Bermudez, Calderon, Chan, Chu, Coto, De La Torre,
Frommer, Goldberg, Shirley Horton, Karnette, Koretz, Lieu,
Liu, Nakanishi, Nation, Oropeza, Parra, Pavley,
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**(Principal coauthors: Senators Cedillo, Ducheny, Escutia, Ortiz, and
Speier)**

February 22, 2006

An act to amend Section 755 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2302, as amended, Committee on Judiciary. Evidence: court interpreters.

Existing law requires that in any action or proceeding pursuant to specified provisions of law, an interpreter be provided by the court for a party who is incapable of understanding or speaking the English language to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney.

This bill would revise the above provision to specify that in any civil action or proceeding, including, but not limited to, any family

court proceeding or service, any juvenile court proceeding, any action involving a traffic or other infraction, any small claims court proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, an interpreter be present to interpret the proceedings, as specified. The bill would also require a court to provide the interpreter, unless a party has notified the court that he or she has made arrangements for a private interpreter. ~~The bill~~

Existing law requires the fees of interpreters to be paid by the litigants in civil cases, as directed by the court, but further requires the fees of an interpreter to be waived for a party who needs an interpreter and appears in forma pauperis.

This bill would revise that provision to specify that the fees of interpreters shall be paid by the court, however, in an unlimited civil action the court may charge the parties a fee equal to the actual cost of providing that service, as specified. The bill would further require the fees of an interpreter to be waived for a party who needs an interpreter and appears either in propria persona or in forma pauperis, or if the court otherwise determines the party is financially unable to pay the cost of an interpreter. The bill would also authorize the court, if a party whose fees have been waived prevails in the action, to assess the amount of waived fees against that party in a manner the court believes is compatible with the party's financial ability, or assess those fees to another party, as specified. The bill would additionally establish the order in which interpreters would be assigned in cases if sufficient funds are not allocated in the annual Budget Act to meet the needs for court interpreters in all civil actions and proceedings or if a sufficient number of interpreters is not available, as specified.

This bill would also require the Judicial Council to conduct a study of the need for court interpreters in civil proceedings and the extent to which the need for interpreters is being met, and to report its findings to the Governor and the Legislature not later than March 1, 2009, and every 2 years thereafter. The bill would also make related changes to that provision of law and would set forth findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) California is emblematic of the American dream, a place of
3 stunning natural beauty, a seat of international commerce, *and* a
4 land of unparalleled opportunity. As a result, California is the
5 most populous and demographically diverse state in the nation, a
6 meeting place of cultures, ethnicities, and ideas unlike any other
7 in the world. Of the state's 34 million people, about 26 percent
8 (roughly 8.8 million people) are foreign born. Californians speak
9 more than 220 languages, and 40 percent of the state's population
10 speaks a language other than English in the home. This
11 extraordinary diversity is among the state's greatest assets and
12 has helped make California an international leader in business,
13 the arts, entertainment, engineering, medicine, and other fields.
14 The state's diversity also poses unique challenges for the delivery
15 of government services, particularly for the courts.

16 (b) For Californians not proficient in English, the prospect of
17 navigating the legal system is daunting, especially for the
18 growing number of parties who do not have access to legal
19 services and therefore have no choice but to represent themselves
20 in court, which is a virtually impossible task for people who are
21 unable to understand the proceedings. Nearly seven million
22 Californians cannot access the courts without significant
23 language assistance, cannot understand pleadings, forms, or other
24 legal documents, cannot communicate with clerks or court staff
25 and cannot understand or participate meaningfully in court
26 proceedings, much less effectively present their cases without a
27 qualified interpreter. People with limited English proficiency are
28 also often members of groups whose cultural traits or economic
29 circumstances make them more likely to be subjected to legal
30 problems, in part because perpetrators recognize their victims'
31 limited ability to access judicial protection.

32 (c) The Legislature has previously recognized that the number
33 of non-English speaking persons in California is increasing, and
34 recognized the need to provide equal justice under the law to all
35 California residents and to provide for their special needs in their
36 relations with the judicial and administrative law system. The
37 Legislature has likewise recognized that the effective
38 maintenance of a democratic society depends on the right and

1 ability of its residents to communicate with their government and
2 the right and ability of the government to communicate with
3 them.

4 (d) Inadequate resources to assist litigants with limited English
5 proficiency ~~affects~~ *affect* the court's ability to function properly,
6 causing delays in proceedings for all court users, inappropriate
7 defaults, and faulty interpretation that can ultimately subvert
8 justice. Our judicial system relies on the adversarial process in
9 which neutral arbiters decide disputes based upon competing
10 presentations of facts and law. Conducting court proceedings
11 when one party is incapable of fully participating significantly
12 impairs the quality and efficiency of the process and its results,
13 including compliance with court orders. The courts have made
14 significant efforts to assist litigants with limited English
15 proficiency, including steps to increase the number of certified
16 and registered interpreters and to provide interpreters in civil
17 cases, if resources are available. Nevertheless, court proceedings
18 are required to be conducted in English, and most crucial court
19 forms and documents are available only in English, while the
20 number of skilled interpreters has actually declined over the past
21 decade and the number of persons requiring interpreter services
22 has increased. As a result, a qualified interpreter is not provided
23 in most civil proceedings.

24 (e) The inability to respond to the language needs of parties in
25 court impairs trust and confidence in the judicial system and
26 undermines efforts to secure justice for all. The authority of the
27 courts depends on public perceptions of fairness and
28 accessibility. Any significant erosion of public trust and
29 confidence in the fairness of judicial outcomes threatens the
30 future legitimacy of the legal system. By excluding a large
31 segment of the population from participation in an institution that
32 shapes and reflects our values, we threaten the integrity of the
33 judicial process. Resentment fostered by the inability to access
34 the benefits of the court system can ultimately impair
35 enforcement of judicial decrees and attenuate the rule of law.

36 (f) Reliance on untrained interpreters, such as family members
37 or children, can lead to faulty translations and threaten the court's
38 ability to ensure justice. Court interpretation is extremely
39 difficult and takes a rare combination of skills, experience, and
40 training. Apart from the possibility of fraud, unqualified

1 interpreters often fail to accurately and comprehensively convey
2 questions and distort testimony by omitting or adding
3 information, or by stylistically altering the tone and intent of the
4 speaker, thereby preventing courts from hearing the testimony
5 properly. These problems compromise the fact finding process
6 and can result in genuine injustice.

7 (g) An overwhelming number of Californians believe that
8 interpreters should be made available to assist non-English
9 speakers in all court proceedings, and that interpreters should be
10 provided free of charge to low-income non-English speakers.

11 (h) California law currently mandates appointment of an
12 interpreter for all witnesses in civil cases, and for parties with
13 hearing impairments. In addition, California statutes mandate the
14 appointment of an interpreter in adjudicative proceedings before
15 state agencies, boards, and commissions at no charge to the
16 parties whenever a party or the party's witness does not
17 proficiently speak or understand English. Other states by contrast
18 provide both witnesses and parties with a right to a
19 court-appointed interpreter in all civil matters at no cost to the
20 party.

21 SEC. 2. Section 755 of the Evidence Code is amended to
22 read:

23 755. (a) In any civil action or proceeding, including, but not
24 limited to, any family court proceeding or service, any juvenile
25 court proceeding, any action involving a traffic or other
26 infraction, any small claims court proceeding, any proceeding to
27 determine the mental competency of a person, or any
28 court-ordered or court-provided alternative dispute resolution,
29 including mediation and arbitration, in which a party does not
30 proficiently speak or understand the English language, and that
31 party is present, an interpreter, as provided in this section, shall
32 be present to interpret the proceedings in a language that the
33 party understands, and to assist communication between the party
34 and his or her attorney. Notwithstanding this requirement, a court
35 may issue an ex parte order pursuant to Sections 2045 and 7710
36 of, and Article 1 (commencing with Section 6320) of Chapter 2
37 of Part 4 of Division 10 of, the Family Code, without the
38 presence of an interpreter. Unless a party has notified the court
39 that he or she has made arrangements for a private interpreter, the
40 court shall provide the interpreter. The interpreter shall be

1 certified pursuant to Article 4 (commencing with Section 68560)
2 of Chapter 2 of Title 8 of the Government Code, except as
3 provided in subdivision (c) of Section 68561 of the Government
4 Code.

5 (b) (1) The fees of interpreters, ~~other than court employees,~~
6 utilized under this section shall be paid *by the court. However, in*
7 *an unlimited civil action the court may charge the parties, in*
8 *proportions as the court may direct, a fee equal to the actual cost*
9 *of providing that service per hour of service required. Any court*
10 *fee paid by the parties or other expense for the services of a*
11 *private interpreter shall be recoverable as taxable costs by the*
12 *prevailing party. When a county is a party, these fees shall be*
13 *paid as provided in subdivision (b) of Section 68092 of the*
14 *Government Code.* ~~However, the~~ The fees of an interpreter shall
15 be waived for a party who needs an interpreter and appears *either*
16 *in propria persona or in forma pauperis pursuant to Section*
17 *68511.3 of the Government Code or if the court otherwise*
18 *determines that the party is financially unable to pay the cost of*
19 *an interpreter .*

20 (2) *If a party whose fees have been waived prevails in the*
21 *action or proceeding or obtains a monetary settlement of his or*
22 *her claims, the court may assess the amount of the waived fees*
23 *either against that party in any manner the court believes is*
24 *compatible with the party's financial ability, or assess those fees*
25 *to another party against whom the party whose fees and costs*
26 *have been waived would have been entitled to recover those fees*
27 *had they not been waived, and order the other party to pay that*
28 *sum to the court or to the clerk and serving and levying officers*
29 *respectively or order the amount of the waived fees added to the*
30 *judgment and so identified by the clerk.*

31 (3) *If sufficient funds are not allocated in the annual Budget*
32 *Act to meet the needs for court interpreters in all civil actions*
33 *and proceedings, or if after diligent search a sufficient number of*
34 *interpreters is not available for all civil actions and proceedings,*
35 *interpreters shall be assigned in the following order of priority:*

36 (A) *Parties appearing in forma pauperis or whom the court*
37 *otherwise determines are financially unable to pay the cost of an*
38 *interpreter.*

39 (B) *Parties appearing in propria persona.*

1 (C) *Actions and proceedings under Division 10 (commencing*
2 *with Section 6200) of the Family Code.*

3 (D) *Actions and proceedings under the Uniform Parentage Act*
4 *(Part 3 (commencing with Section 7600) of Division 12 of the*
5 *Family Code).*

6 (E) *Actions and proceedings for dissolution or nullity of*
7 *marriage or legal separation of the parties in which a protective*
8 *order has been granted or is being sought pursuant to Section*
9 *6221 of the Family Code.*

10 (F) *Other actions and proceedings in family court.*

11 (G) *Actions and proceedings relating to unlawful detainer.*

12 (H) *Actions and proceedings in small claims court,*
13 *notwithstanding Section 116.550 of the Code of Civil Procedure.*

14 (I) *Actions and proceedings involving appointment of a*
15 *guardian or conservator.*

16 (J) *Other actions and proceedings in probate court.*

17 (K) *Other limited civil actions and proceedings.*

18 (L) *Other unlimited civil actions and proceedings.*

19 (4) *This section shall not be construed to negate or limit any*
20 *right to an interpreter in a civil action or proceeding otherwise*
21 *provided by state or federal law.*

22 (c) ~~In~~ *Except as provided in paragraph (3) of subdivision (b)*
23 *any civil action in which an interpreter is required under this*
24 *section, the court shall not commence proceedings until the*
25 *appointed interpreter is present and situated near the party and*
26 *his or her attorney. However, this section shall not prohibit the*
27 *court from doing either of the following:*

28 (1) *Issuing an order when the necessity for the order*
29 *outweighs the necessity for an interpreter.*

30 (2) *Extending the duration of a previously issued temporary*
31 *order if an interpreter is not readily available.*

32 (d) *This section does not prohibit the presence of any other*
33 *person to assist a party.*

34 (e) *A local public entity may, and the Judicial Council shall,*
35 *apply to the appropriate state agency that receives federal funds*
36 *authorized pursuant to the federal Violence Against Women Act*
37 *(P.L. 103-322) for these federal funds or for funds from sources*
38 *other than the state to implement this section.*

39 (f) *The Judicial Council shall draft rules and modify forms*
40 *necessary to implement this section, including those for the*

1 petition for a temporary restraining order and related forms, to
2 inform both parties of their right to an interpreter pursuant to this
3 section.

4 *SEC. 3. The Judicial Council shall conduct a study of the*
5 *need for court interpreters in civil proceedings and the extent to*
6 *which the need for interpreters is being met pursuant to Section*
7 *755 of the Evidence Code, and shall report its findings and*
8 *recommendations to the Governor and the Legislature on or*
9 *before March 1, 2009, and every two years thereafter. The study*
10 *shall include data showing, by court, the languages for which*
11 *parties in civil matters need a court-provided interpreter*
12 *according to type of action or proceeding and whether the party*
13 *appears in propria persona or in forma pauperis, as well as the*
14 *extent to which each of these needs is met by court employees or*
15 *independent contractors, certified or registered interpreters or, if*
16 *not by a certified or registered interpreter, then the*
17 *circumstances warranting good cause for appointment of a*
18 *noncertified interpreter, the amounts expended for each*
19 *according to court, type of party and type of action or*
20 *proceeding, and the fees apportioned and collected from parties*
21 *pursuant to paragraph (2) of subdivision (b) of Section 755 of the*
22 *Evidence Code Section. The report shall include findings and*
23 *recommendations regarding the need for additional interpreters*
24 *and interpreter compensation, whether the availability of*
25 *interpreters or the assessment of party fees has an impact on*
26 *equal access to justice, and the effect of court interpreters on*
27 *court administration and efficiency, including reduced courtroom*
28 *time for hearings, increased compliance with orders and court*
29 *schedules, reduced case delays, and enhanced coordination*
30 *between courts and culturally relevant services in the community.*